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IN THE
SUPREME COURT OF THE UNITED STATES

CASE NO. 79-5816

CHARLOTTE FIELDHOUSE and EDMUND FIELDHOUSE,

Appellants,

vs.

THE PUBLIC HEALTH TRUST OF DADE COUNTY, FLORIDA, an agency and instrumentality of Dade County, Florida, which operates Jackson Memorial Hospital,

Appellee.

BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

Appellants FIELDHOUSE, pursuant to Rule 16(4) of the rules of this Court, file this brief in opposition to Appellee's Motion to Dismiss or Affirm.

In its Motion to Dismiss or Affirm, Appellee asserts that the common law of Florida has evolved to the point where the support obligations of men and women are equal with respect to the marriage and the family unit, and that Appellants can point to no Florida decision insulating a wife from a financial obligation to the marital unit equal to that of her husband.

This simply is not so. Cited in Appellants' Jurisdictional Statement is Davies v. Davies, 113 So.2d 250 (Fla. 3d DCA 1959). This case makes clear that the basis for an award of alimony was the common law obligation of a husband to support his wife. It therefore followed that since a wife has no common law duty to support her husband, the husband could not obtain an award of alimony.

There is a simple and straightforward reason why there is no additional decisional law to cite on the issue of a wife's insulation from financial obligations to her husband.

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It is that the common law concept of a married woman as a legal non-entity, entirely dependent upon her husband, who can neither sue nor be sued was absolutely fundamental, unquestioned and therefore unlitigated. The notion was that the husband and wife were one, and the husband was the one, the legal persona of the family unit.

And while the married women's Property Act has emancipated the female spouse, and the Constitution of Florida was changed in 1968 to include women as well as men in its equal protection guarantee, and this Court's precepts of constitutional adjudication on gender based discrimination have evolved, there is no Florida case law imposing an equal financial responsibility on wives with respect to creditors of their husbands.

It must be remembered that Appellee's count against the husband, and his legal obligation to it, is based on his common law duty to support his wife. Without that common law duty, no creditor action exists. And, it is patently clear that no equivalent reciprocal duty to support a husband has been imposed on wives by statute or case law in this state. Thus there is no creditor action against a wife, and Appellee can point to no Florida case holding a wife liable for her husband's bills on the basis of their marriage. The wife is therefore an agent or conduit of liability on the marital unit in situations where the husband is not.

As the Florida case law stands today, particularly after the Florida Supreme Court opinion in this case, the decisional law with respect to financial obligations between spouses for one another's debts remains unchanged from the days of the old common law, and is unequal on the basis of sex. Only if this Court reverses the Florida Supreme Court will this

inequality be remedied.

Respectfully submitted,

LEGAL SERVICES OF GREATER MIAMI, INC.

BY Lester C. Wisotsky

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